

152 FERC ¶ 61,256  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER15-2351-000

ORDER ACCEPTING AND SUSPENDING AGREEMENTS, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2015)

1. On July 31, 2015, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> an unexecuted Market Participant Service Agreement between SPP as transmission provider and Alliant Energy Corporate Services, Inc. (Alliant) as customer (Market Participant Agreement), and an unexecuted Agreement Establishing a Pseudo-Tie Electrical Interconnection Point between SPP, Midcontinent Independent System Operator, Inc. (MISO) as the external balancing authority and Alliant as the market participant (Pseudo-tie Agreement). In this order, we accept the Pseudo-tie Agreement and Market Participant Agreement for filing, suspend them for a nominal period, to become effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

2. SPP states that section 2.2(6) of Attachment AE of the SPP Open Access Transmission Tariff (Tariff) requires that all load within the SPP footprint must be registered in the SPP Integrated Marketplace.<sup>3</sup> SPP asserts that Alliant load is connected to the transmission facilities of Corn Belt Power Cooperative (Corn Belt) and Northwest

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2015).

<sup>3</sup> SPP Transmittal at 1 (citing SPP Tariff, Attachment AE, section 2.2(6)).

Iowa Power Cooperative (NIPCO), which have both executed the SPP Membership Agreement<sup>4</sup> and anticipate transferring functional control of certain of their transmission facilities to SPP, effective October 1, 2015.<sup>5</sup> SPP contends that, once the Corn Belt and NIPCO facilities are under the functional control of SPP, the Alliant load will be within the SPP footprint. According to SPP, Alliant is required to register its load with SPP in accordance with the terms of the SPP Tariff.

## **II. Pseudo-tie Agreement, Market Participant Agreement, and Request for Waiver**

3. SPP states that Alliant plans to pseudo-tie its load into the MISO Balancing Authority. According to SPP, section 2.2(14) of Attachment AE provides that market participants with assets interconnected to the transmission system that are not participating in the energy and operating reserve markets must pseudo-tie the resource or load out of the SPP Balancing Authority Area in accordance with Attachment AO of the Tariff.<sup>6</sup> SPP states that such assets shall continue to be registered in the Integrated Marketplace for the purposes of accounting for congestion and loss charges between the resource price node and the applicable external interface settlement location, as described in sections 8.6.19 and 8.6.20 of Attachment AE.

4. SPP asserts that section 6.2.7 of the SPP Market Protocols provides that a market participant representing load interconnected to the SPP transmission system has the option to pseudo-tie that load out of the SPP Balancing Authority by executing the Pseudo-tie Agreement. SPP states that Alliant has declined to execute both the Market Participant Agreement and the Pseudo-tie Agreement and register its load with the SPP Integrated Marketplace as required by the SPP Tariff and SPP Market Protocols. According to SPP, section 2.1 of Attachment AE provides that if a market participant fails or refuses to execute a market participant service agreement, SPP will file an unexecuted market participant service agreement with the Commission. SPP asserts that it, therefore, has submitted the unexecuted agreements, as is required for Alliant to pseudo-tie its load out of the SPP Balancing Authority.

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<sup>4</sup> *Id.* at 2 (citing Submission of Amendments to SPP Membership Agreement for Corn Belt, East River, and NIPCO of Southwest Power Pool, Inc., Docket No. ER15-1906-000 (filed June 11, 2015)).

<sup>5</sup> *Id.* (citing Submission of Revenue Requirement, Formula Rate Template and Formula Rate Protocols for Corn Belt Power Cooperative of Southwest Power Pool, Inc., Docket No. ER15-2028-000 (filed June 26, 2015)).

<sup>6</sup> Attachment AO is a *pro forma* Agreement Establishing a Pseudo-Tie Electrical Interconnection Point.

5. SPP also requests, to the extent necessary, a waiver of the deadlines associated with the registration of a new market participant in the Integrated Marketplace. Specifically, SPP states that section 2.2(1) of Attachment AE provides that for registration “[n]ew [m]arket [p]articipants will follow the timeframe as specified in [s]ection 6.4 of the Market Protocols in addition to the detailed model update timing requirements in Appendix E of the Market Protocols.”<sup>7</sup> SPP explains that Appendix E of the SPP Market Protocols requires that a new market participant submit its registration application at least six months prior to the start of its participation in the Integrated Marketplace.<sup>8</sup> According to SPP, because the Alliant load will be in the Integrated Marketplace effective October 1, 2015, Alliant is unable to meet the timeframes required by the SPP Market Protocols. SPP claims that it will work with Alliant to obtain the information necessary to incorporate the Alliant load into the models for the Integrated Marketplace, effective October 1, 2015. Finally, SPP requests an effective date of October 1, 2015 for the Market Participant Agreement and the Pseudo-tie Agreement.

### **III. Notice of Filing and Responsive Pleadings**

6. Notice of SPP’s July 31, 2015 filing was published in the *Federal Register*, 80 Fed Reg. 46,973 (2015), with interventions and protests due on or before August 21, 2015. ITC Midwest LLC filed a timely motion to intervene. Corn Belt and NIPCO filed timely motions to intervene and comments. Alliant filed a timely motion to intervene and protest. On September 8, 2015, Corn Belt and NIPCO filed a joint answer to Alliant’s protest. On September 10, 2015, SPP filed an answer to Alliant’s protest. On September 18, 2015, Alliant filed an answer to Corn Belt’s and NIPCO’s joint answer and SPP’s answer. On September 22, 2015, Alliant filed a supplement to its answer.

### **IV. Corn Belt and NIPCO Comments**

7. Corn Belt and NIPCO state that they support SPP’s filing of the Market Participant Agreement and the Pseudo-tie Agreement. Corn Belt and NIPCO assert that SPP filed the agreements pursuant to the requirements of SPP’s Tariff. Corn Belt and NIPCO contend that this will ensure that the Alliant load that will be within the SPP footprint following the integration date will be properly registered, and that Alliant will

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<sup>7</sup> *Id.* at 2-3 (citing SPP Tariff, Attachment AE, section 2.2(1); SPP Market Protocols, App. E).

<sup>8</sup> *Id.* at 3 (citing SPP Tariff, Attachment AE, section 2.2(1); SPP Market Protocols, section 6.4 and Appendix E).

be able to pseudo-tie its load within the SPP footprint into the MISO footprint. Corn Belt and NIPCO argue that the Commission should accept the agreements as filed.<sup>9</sup>

8. Corn Belt and NIPCO state that they support SPP's request for waiver to facilitate the October 1, 2015 integration date. According to Corn Belt and NIPCO, given the timing of the October 1, 2015 integration date and the need for the loads to be covered by the Market Participant Agreement, it is prudent for the Market Participant Agreement between SPP and Alliant to be in effect as of October 1, 2015.<sup>10</sup>

## V. Alliant Protest

9. Alliant asserts that SPP ignores that Alliant currently does not, and does not intend to, serve any load within SPP or otherwise participate in market activities with the SPP footprint. Alliant avers that, because it does not participate in wholesale electricity market-related activities within the SPP footprint, the Market Participant Agreement and Pseudo-tie Agreement should be rejected.<sup>11</sup>

10. Alliant argues that, by filing the unexecuted Market Participant Agreement and Pseudo-tie Agreement and naming Alliant as market participant, SPP has involuntarily placed upon Alliant the burden of participating in SPP and making payments such as congestion or loss charges. According to Alliant, it may not be required to become subject to SPP requirements in this manner. Alliant notes that the Commission has emphasized that participation in regional transmission organizations (RTO) is entirely voluntary.<sup>12</sup> Therefore, Alliant contends that SPP cannot require Alliant to participate in SPP activities and to incur SPP charges without the concurrence of Alliant.

11. Alliant argues that SPP erroneously believes that Alliant will become a market participant under the SPP Tariff and notes that a market participant is defined as an "entity that generates, transmits, distributes, purchases, or sells electricity or provides [a]ncillary [s]ervices with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the [t]ransmission [s]ystem."<sup>13</sup>

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<sup>9</sup> Corn Belt Comments at 3-4; NIPCO Comments at 3-4.

<sup>10</sup> Corn Belt Comments at 4; NIPCO Comments at 4.

<sup>11</sup> Alliant Protest at 3-4.

<sup>12</sup> *Id.* at 3 (citing *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058, at PP 47-49 (2010); *Duquesne Light Co.*, 122 FERC ¶ 61,039, at P 128 (2008); *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at PP 29, 166 (2006)).

<sup>13</sup> *Id.* at 4.

Alliant states that it is a service company that is not a public utility company. Alliant asserts that it does not have any load within the SPP footprint, or elsewhere, that might permit it to be treated as a market participant. According to Alliant, it does not own or operate electric generation, transmission, or distribution facilities, and does not purchase or sell electricity. Alliant asserts that it is not one of the specific types of entities identified in the SPP Tariff that may qualify as a market participant. Alliant avers that, for those reasons, Alliant cannot be considered to be a market participant for the purpose of becoming a party to either agreement, and section 2.2(6) of Attachment AE of the SPP Tariff does not apply to Alliant.<sup>14</sup>

12. Alliant notes that the load at issue in the agreements will be served by generation facilities that are dispatched by MISO. Alliant asserts that the load will not be located electrically within the SPP footprint, and because of this there is no basis for SPP to establish a market participant service agreement with respect to such load. According to Alliant, the obligation to enter into a pseudo-tie agreement only applies to market participants that are registered in the SPP Integrated Marketplace. Alliant argues that, because it is not a market participant, and is not obligated to register as a participant in the SPP Integrated Marketplace, there is no basis for SPP's submission of the unexecuted Pseudo-tie Agreement.<sup>15</sup>

13. Alliant states that, although the loads that are dealt with in the agreements are connected to the transmission facilities of Corn Belt and NIPCO, Alliant understands that Corn Belt and NIPCO have decided not to become market participants. Alliant states that they will be represented by Basin Electric Power Cooperative (Basin) as their market participant agent. Alliant asserts that, because these loads are physically connected to Corn Belt's and NIPCO's transmission facilities, each of them will meet the definition of market participant, as defined by the SPP Tariff. According to Alliant, SPP is seeking to require Alliant to register as a market participant with respect to these loads because no other market participant has accepted financial responsibility for them. Alliant contends that it would be unjust and unreasonable for the Commission to impose the financial obligation of an SPP market participant on Alliant, which does not operate within the SPP footprint, simply because no other entity has been willing to accept such responsibility.<sup>16</sup>

14. Alliant avers that the most equitable solution would be for SPP to designate Corn Belt and NIPCO as market participants for the loads at issue. Alliant contends that this

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<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 6.

would eliminate any cause for SPP to seek to have the Commission impose the financial obligation of being a market participant on Alliant. According to Alliant, if it is forced to become a market participant, then the Commission should require SPP to treat Alliant as eligible to receive a grandfathered agreement carve out (GFA Carve Out). Alliant notes that, under a GFA Carve Out, a GFA responsible entity, such as Basin or Corn Belt and NIPCO, would assume responsibility for the costs of congestion and marginal losses. Alliant argues that, by making it eligible for treatment as GFA Carve Out, SPP would relieve Alliant of a substantial burden that would otherwise be imposed unjustifiably on Alliant.<sup>17</sup>

15. Alliant asserts that the *pro forma* Market Participant Agreement filed by SPP does not reflect the unique circumstances associated with the loads at issue in the instant proceeding. Alliant avers that it is unjust and unreasonable for SPP to impose the generally-applicable obligations of a market participant in SPP on entities that do not transact business within the SPP footprint. Alliant argues that because the form of Market Participant Agreement submitted by SPP does not correctly set forth the terms of an acceptable agreement between SPP and Alliant, it should be rejected.<sup>18</sup>

16. Alliant notes that there are many material terms and conditions that have been left blank in the Pseudo-tie Agreement filed by SPP. Alliant argues that this document cannot be considered enforceable when material terms are omitted. According to Alliant, SPP has not cited any authority to file an unexecuted pseudo-tie agreement. Alliant notes that although the Pseudo-tie Agreement would apply to both Alliant and MISO, neither has agreed to its terms. Alliant avers that it is unreasonable for SPP to seek to impose the burdens of the Pseudo-tie Agreement on Alliant or MISO without their consent.<sup>19</sup>

17. Alliant asserts that SPP has failed to follow procedures in its Tariff with respect to the registration timeframe for new market participants. Alliant states that because it does not intend to participate in the Integrated Marketplace, it has not submitted any registration application to SPP, and as noted by SPP, is unable to meet the timeframes required by the SPP Market Protocols. According to Alliant, SPP acknowledged in its transmittal letter that it has failed to comply with the requirements of the SPP Tariff, but asserts that a waiver of the applicable tariff provisions is appropriate in this case.<sup>20</sup> Alliant argues that SPP has failed to show that its requested waiver meets the following

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<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 7-8.

<sup>19</sup> *Id.* at 10-11.

<sup>20</sup> *Id.* at 11.

criteria required by the Commission: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences.<sup>21</sup>

18. Alliant states that SPP's only justification for the requested waiver is that the Alliant load will be in the Integrated Marketplace effective October 1, 2015 and, therefore, Alliant is unable to meet the timeframes require by the SPP Market Protocols. Alliant also asserts that the waiver is not of limited scope. Alliant further argues that SPP has not shown that there is a concrete problem which might be remedied by grant of the waiver of provisions of the SPP Tariff it has requested.

## **VI. Corn Belt and NIPCO Answer**

19. Corn Belt and NIPCO assert that, whether the Commission looks to Alliant's affiliate Interstate Power and Light Company (IPL) directly, or Alliant serves as market participant in its capacity as a service company on behalf of IPL, Alliant, IPL, or another Alliant affiliate is the proper party to the Market Participant Agreement and the Pseudo-tie Agreement. Corn Belt and NIPCO contend that the precedent cited by Alliant regarding the voluntary nature of RTO participation relates to the ability of transmission owning utilities voluntarily to elect to place their facilities under the control of an RTO, not whether an entity serving load over the transmission facilities that are under the functional control of the RTO may completely insulate itself from the service and cost requirements related to delivery of such power.<sup>22</sup> Corn Belt and NIPCO assert that becoming a market participant for the limited purpose of registering the load located in the SPP footprint will not, therefore, force Alliant or its affiliates to involuntarily place any transmission facilities under the control of SPP in contravention of the Commission's policy.<sup>23</sup>

20. Corn Belt and NIPCO contend that the agreements would ensure that Alliant or IPL complies with requirements associated with serving its loads over SPP controlled transmission facilities. Corn Belt and NIPCO argue that, under the SPP Tariff, Alliant or IPL is the appropriate party for the Market Participant Agreement. Corn Belt and NIPCO note that since the load will be pseudo-tied back into MISO, the Market Participant Agreement and Alliant's interaction with SPP will be for the limited purposes of registering loads physically located within the SPP footprint, and to account for congestion and losses. Corn Belt and NIPCO aver that pseudo-tying the load into MISO

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<sup>21</sup> *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,101 (2015)).

<sup>22</sup> Corn Belt and NIPCO Answer at 3 (citing Alliant Protest at 3).

<sup>23</sup> *Id.*

does not eliminate the SPP Tariff requirement that entities with load physically located within SPP register that load. Corn Belt and NIPCO note that while the loads at issue will become subject to the requirements of the SPP Tariff following the integration, Corn Belt and NIPCO would not oppose any waiver of costs deemed appropriate by SPP or the Commission in connection with the transition process.<sup>24</sup>

## **VII. SPP Answer**

21. In its answer, SPP disputes Alliant's assertion that it is being improperly compelled to register as a market participant.<sup>25</sup> SPP asserts that it is undisputed that, once Corn Belt and NIPCO become integrated with SPP, IPL load that is interconnected with Corn Belt and NIPCO will be physically located within the SPP footprint.<sup>26</sup> SPP is authorized to file relevant agreements unexecuted if Alliant does not execute such agreements,<sup>27</sup> and section 2.2(14) of Attachment AE of the Tariff also clearly requires Alliant to enter into a Pseudo-tie Agreement consistent with Attachment AO.<sup>28</sup> According to SPP, section 2.2(14) was intended to ensure that entities with assets interconnected to the SPP transmission system that will not participate in the SPP markets pseudo-tie their resource or load out of the SPP Balancing Authority Area in accordance with Attachment AO, and that "[s]uch assets shall continue to be registered in the market for purposes of accounting for congestion and loss charges between the pricing node and settlement location as provided under Attachment AE."<sup>29</sup>

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<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> SPP Answer at 3 (citing Alliant Protest at 4-5).

<sup>26</sup> *Id.* at 4 (citing SPP Transmittal at 2; Alliant Protest at 5-7, 9-10 and Affidavit of Christian E. Alva at 3).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5 (citing SPP Tariff, Attachment AE, section 2.2(14) ("Market [p]articipants with assets interconnected to the [t]ransmission [s]ystem that are not participating in the [e]nergy and [o]perating [r]eserve [m]arkets must pseudo-tie the [r]esource or load out of the SPP Balancing Authority Area in accordance with Attachment AO.")).

<sup>29</sup> *Id.* (citing Submission of Tariff Revisions to Modify SPP Integrated Marketplace of Southwest Power Pool, Inc., Docket No. ER14-1653-000, at 14 (filed Apr. 3, 2014); *Sw. Power Pool, Inc.*, 148 FERC ¶ 61,145, at P 8 (2014)).



22. SPP argues that Alliant incorrectly asserts that SPP lacks the authority to submit the Pseudo-tie Agreement on an unexecuted basis.<sup>30</sup> SPP contends that section 6 of the *pro forma* Pseudo-tie Agreement set forth in Attachment AO of the Tariff and section 6 of the unexecuted Pseudo-tie Agreement both state that “[i]f the parties are unable to resolve any issues, SPP shall file *an unexecuted agreement* with the Commission, including all agreed-upon non-conforming deviations.”<sup>31</sup> Thus, SPP states that it unquestionably has the authority to file the Pseudo-tie Agreement with the Commission on an unexecuted basis.

23. SPP disagrees with Alliant’s claim that Alliant is not a proper party to the agreements because it is not a market participant. According to SPP, Alliant and IPL have submitted jurisdictional agreements with the Commission that designate Alliant as IPL’s agent, and Alliant also routinely submits filings for IPL.

24. SPP further argues that the Commission should reject Alliant’s request that, if it is required to become a market participant, the Commission direct SPP to deem Alliant as eligible to receive a GFA Carve Out, with Corn Belt, NIPCO, or some other entity designated as the GFA responsible entity.<sup>32</sup> SPP claims that Alliant’s only support for its proposed GFA Carve Out treatment is that treatment as a GFA Carve Out would relieve Alliant “of a substantial burden that would otherwise be imposed unjustifiably on [Alliant].”<sup>33</sup> SPP also contends that Alliant has not identified any Tariff provision that would authorize SPP to provide carved-out GFA status to Alliant or to force another entity to undertake market participant obligations on Alliant’s behalf.

25. SPP asserts that the Commission should grant its request for a waiver, despite Alliant’s opposition and argument that SPP has failed to follow the procedures codified in its Tariff, and has not justified the proposed waiver.<sup>34</sup> SPP argues that the waiver

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<sup>30</sup> *Id.* (citing Alliant Protest at 10; SPP Tariff, Attachment AE, section 2.1).

<sup>31</sup> *Id.* (SPP’s emphasis).

<sup>32</sup> *Id.* at 7 (citing Alliant Protest at 7)

<sup>33</sup> *Id.* (citing Alliant Protest at 7).

<sup>34</sup> *Id.* at 8 (citing Alliant Protest at 11-13).

request is consistent with Commission standards.<sup>35</sup> SPP states that the Alliant load will become physically located within the SPP footprint effective October 1, 2015, and SPP has worked diligently to get Alliant to register as a market participant as required by the Tariff. According to SPP, Alliant did not submit a registration application or the required information at least six months prior to October 1, 2015.<sup>36</sup> Thus, SPP states that, because Alliant failed to register its load as required by the Tariff within the applicable registration deadlines, the waiver is necessary as part of the integration of the Corn Belt and NIPCO facilities, and associated loads, into SPP effective October 1, 2015. SPP also argues that the waiver is of limited scope in that SPP seeks only a one-time waiver of the requirements set forth in Tariff Attachment AE and the Market Protocols that are tied to Corn Belt's and NIPCO's (and attached loads') integration into SPP and the Integrated Marketplace.

26. SPP further argues that the waiver request also addresses a concrete problem, specifically, the need for SPP to have the registration information necessary to undertake the detailed modeling described in Attachment AE and the Market Protocols that is required to integrate the various new transmission systems, resources, and loads into SPP on October 1, 2015. Finally, SPP avers that granting the waiver will not only not harm any third parties, but it will help ensure the proper accounting for the congestion and marginal loss costs that should be allocated to Alliant as of October 1, 2015. According to SPP, it also will benefit Alliant by allowing Alliant's load to be pseudo-tied to MISO as of that date as Alliant desires, without being treated as load within the Integrated Marketplace.

27. With regard to Alliant's claims that participation in RTOs is voluntary, SPP argues that it is not forcing Alliant to join or otherwise participate in SPP. SPP notes that any obligations imposed on Alliant pursuant to the agreements are being imposed to provide Alliant with its desired pseudo-tie out of SPP and into MISO, and Alliant is only being required to pay for services it is taking in accordance with the Tariff.

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<sup>35</sup> *Id.* at 9 (citing Alliant Protest at 11; *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047, at P 64 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011)).

<sup>36</sup> *Id.* SPP notes that Corn Belt's and NIPCO's plans to turn functional control of their transmission facilities over to SPP was a known event, and while Alliant states SPP "might have arranged for some other entity" to assume Alliant's obligations under the Tariff, Alliant has had the same opportunity and elected to do nothing. *Id.* (citing Alliant Protest at 12).

28. SPP responds to Alliant's contention that the *pro forma* market participant service agreement is not suitable for its purposes,<sup>37</sup> stating that the Market Participant Agreement (as well as the Pseudo-tie Agreement) conform to the applicable form of agreement set forth in Tariff Attachment AH and Attachment AO, respectively.<sup>38</sup> SPP argues that Alliant should have chosen to negotiate reasonable, case-specific provisions with SPP, rather than simply refusing to sign.

### **VIII. Alliant Answer**

29. In its answer, Alliant generally reiterates its arguments that SPP erred by filing the Market Participant Agreement designating Alliant as the counter-party and that SPP failed to comply with its Tariff in obtaining certain market participant information by the required deadlines. In response to SPP's argument that Alliant is the appropriate market participant because it sometimes acts as agent for IPL, Alliant argues that it and IPL are separate corporate entities, and SPP has not demonstrated that Alliant has been authorized to act as agent for IPL with respect to registration as a market participant within SPP. With regard to SPP's claim that its requested waiver is of limited scope, Alliant contends that, even though the integration of each transmission owner into SPP is a one-time event, additional transmission owners may seek to become market participants of SPP at some time in the future, and, therefore, the waiver request may not properly be treated as a limited, one-time request.

### **IX. Discussion**

#### **A. Procedural Matters**

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

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<sup>37</sup> *Id.* at 12 (citing Alliant Protest at 7-8).

<sup>38</sup> *Id.* (citing SPP Transmittal at 1 & nn.3-4).

**B. Substantive Matters**

32. We find that the Market Participant Agreement and Pseudo-tie Agreement raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below.

33. Our preliminary analysis indicates that the Market Participant Agreement and Pseudo-tie Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the Market Participant Agreement and Pseudo-tie Agreement for filing, suspend them for a nominal period, to become effective October 1, 2015, subject to refund, and set them for hearing and settlement judge procedures.

34. While we are setting the Market Participant Agreement and Pseudo-tie Agreement for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>39</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>40</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Market Participant Agreement and Pseudo-tie Agreement are hereby accepted for filing, suspended for a nominal period, to become effective October 1, 2015, subject to refund, as discussed in the body of this order.

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<sup>39</sup> 18 C.F.R. § 385.603 (2015).

<sup>40</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience. (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the Market Participant Agreement and Pseudo-tie Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.